



REPUBLIC OF KENYA



KENYA LAW
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**BJL v JKL (Matrimonial Cause E069 of 2021)
[2022] KEHC 13314 (KLR) (Family) (29 September 2022) (Ruling)**

Neutral citation: [2022] KEHC 13314 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

FAMILY

MATRIMONIAL CAUSE E069 OF 2021

AO MUCHELULE, J

SEPTEMBER 29, 2022

BETWEEN

BJL APPLICANT

AND

JKL RESPONDENT

RULING

1. On March 28, 2022 this court ordered the respondent JKL to immediately allow the applicant BJL to occupy their matrimonial home that was in [particulars withheld] House No xx. This was to be until their dispute over matrimonial property was heard and determined. The two had been married since June 24, 1997 but were at the time having a divorce cause. The marriage has since been dissolved. The applicant has in the instant application dated April 11, 2022 stated that the respondent has disobeyed the order to hand over the house. She wants him to be arrested if he does not want to hand over the house, and that the police officers at [particulars withheld] do enforce the arrest for the non-compliance with the court order.
2. The respondent has opposed the application. He states that it is not that he has refused to comply with the order; that the house does not belong to him, it belongs to a third party; and that therefore he is incapable of giving the house to the applicant. He states that all along, including when the application that led to the order was being heard, his position was clear that the house did not belong to him.
3. The respondent is being mischievous. The applicant pleaded that this was their matrimonial property, and that the respondent had forcefully evicted her from it. In response the respondent stated the following in paragraphs 6, 7 and 8 of his replying affidavit sworn on November 11, 2021:-
 6. That indeed as a matter of fact, the applicant moved out of our matrimonial home on her own volition despite efforts to ask her to still stay and help to salvage the marriage. She moved in and



lived with the boyfriend. In a short while thereafter whilst coming in to meet the children, she would be dropped and later picked up by the boyfriend who by his act and character exposed me and the children to a very high risk of insecurity, psychological torturescorn and ridicule.

7. That it is the applicant who moved out of our matrimonial home. She informed me that she was moving into her own house since she no longer wanted to stay with us in the family home as she had moved on.
8. That I therefore did not evict the applicant from our matrimonial home, on the contrary, she moved out of our matrimonial home for reasons known to her in particular her non commitment to the marriage despite my efforts to save and protect the marriage.”
4. The respondent cannot now turn around to say that this was not their matrimonial property.
5. Even if the respondent thinks that, on the evidence, the order ought not to have been made, he still has the responsibility to obey it (*Econet Wireless Kenya Ltd -v- Minister for Information and Communication of Kenya and Another* [2005] 1 KLR 828). The obedience of a court is at the heart of the administration of justice. It is an obligation that binds any person against whom the order has been made. If the person thinks that the order is illegal or void he has to move with speed to have it reviewed and/or set aside.
6. If the respondent has since transferred the house, that would be an act in disobedience.
7. That being the case, I find that the respondent is guilty of disobedience of the order that was issued by this court on March 28, 2022. I order him to appear before this court on October 17, 2022 to show cause why he should not be punished for the contempt. He will pay costs of this application.

DATED AND DELIVERED ELECTRONICALLY AT NAIROBI THIS 29TH SEPTEMBER 2022.

A.O. MUCHELULE

JUDGE

